



**Billing Code 3110-01**

**OFFICE OF MANAGEMENT AND BUDGET**

**Office of Federal Procurement Policy**

**48 CFR Part 9903**

**Cost Accounting Standards: Clarification of the Exemption from Cost Accounting Standards for Firm-Fixed-Price Contracts and Subcontracts Awarded Without Submission of Certified Cost or Pricing Data**

**AGENCY:** Office of Management and Budget, Office of Federal Procurement Policy, Cost Accounting Standards Board.

**ACTION:** Final rule.

**SUMMARY:** The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is publishing, without change from the proposed rule, a final rule revising the exemption from CAS for firm-fixed-price (FFP) contracts and subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data. This final rule clarifies that the exemption applies to FFP contracts and subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

**DATES:** *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ida Pham, Acting Staff Director, Cost Accounting Standards Board (telephone: 202-881-9062; email: [Ida.L.Pham@omb.eop.gov](mailto:Ida.L.Pham@omb.eop.gov)).

## **SUPPLEMENTARY INFORMATION:**

### **A. Regulatory Process – Changes to 48 CFR Part 9903**

The CAS Board's regulations and Standards are codified at 48 CFR chapter 99. This final rule amends of a CAS Board regulation other than a Standard, and as such is not subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c) [formerly, 41 U.S.C. 422(g)].

### **B. Background and Summary**

In October 2011, the CASB issued a proposed rule to clarify the CAS exemption provided by 48 CFR 9903.201-1(b)(15) (76 FR 61660). Since 2000, this provision has provided an exemption from CAS for FFP contracts and subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data. In proposing to add the word "certified" before "cost or pricing data," the Board explained that at the time the CAS rule was promulgated in 2000, the term cost or pricing data was understood to mean certified cost or pricing data. However, as a result of changes made to the Federal Acquisition Regulation in 2010 by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council, the term could also be read to mean cost or pricing data without the certification. The Board sought to avoid confusion and provide clarity to the government contractor community on its original intent, which was to implement section 802 of the NDAA for FY 2000 (Pub. L. 106-65). Section 802 adopted the recommendation of the Cost Accounting Standards Board Review Panel, which stated that when certified cost or pricing data were not obtained for FFP contracts and subcontracts, the safeguards provided by CAS were likewise not necessary. For additional background on the proposed rule, go to (76 FR 61660).

Two comments were received in response to the proposed rule, both of which expressed support for the proposed change. Accordingly, the CAS Board is adopting and finalizing the

proposed rule without change.

### **C. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. Chapter 35, Subchapter I) does not apply to this rulemaking, because this rule imposes no additional paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, et seq. The purpose of this rule is to clarify the implementation of the “Streamlined Applicability of Cost Accounting Standards” at Section 802 of National Defense Authorization Act for Fiscal Year 2000. The records required by this final rule are those normally maintained by contractors and subcontractors who claim reimbursement of costs under Government contracts.

### **D. Executive Orders 12866 and 13771, the Congressional Review Act, and the Regulatory Flexibility Act**

This rule serves to clarify the elimination of certain administrative requirements associated with the application and administration of the Cost Accounting Standards by covered Government contractors and subcontractors, consistent with the provisions of “Streamlined Applicability of Cost Accounting Standards” at Section 802 of National Defense Authorization Act for Fiscal Year 2000. In addition, because the final rule will achieve greater consistency between the CAS and the FAR, the rule promotes simplification for contractors. The economic impact on contractors and subcontractors is, therefore, expected to be minor. As a result, the CAS Board has determined that this final rule will not result in the promulgation of an “economically significant rule” under the provisions of Executive Order 12866, that a regulatory impact analysis is not required, and the requirements of E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs*, do not apply. For the same reason, this final rule is not a “major rule” under the Congressional Review Act, 5 U.S.C. Chapter 8. Finally, this final rule does not

have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this final rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. Chapter 6.

**List of Subjects in 48 CFR Part 9903**

Cost accounting standards, Government procurement.

**Lesley A. Field,**

*Acting Chair, Cost Accounting Standards Board.*

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

## **PART 9903 – CONTRACT COVERAGE**

1. The authority citation for part 9903 continues to read as follows:

**Authority:** Public Law 111-350, 124 Stat. 3677, 41 U.S.C. 1502.

### **Subpart 9903.2 – CAS Program Requirements**

2. Section 9903.201-1 is amended by revising paragraph (b)(15) to read as follows:

#### **9903.201-1 CAS applicability.**

\* \* \* \* \*

(b) \* \* \*

(15) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

[FR Doc. 2018-04101 Filed: 2/27/2018 8:45 am; Publication Date: 2/28/2018]